

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 119470 through CA MC 119475.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and the claim is properly declared void.

APPEARANCES: Alfred E. Malech, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Alfred E. Malech appeals the decision of the California State Office, Bureau of Land Management (BLM), dated December 1, 1982, which returned the notices of location and service fees for recordation of the PHP Nos. 1 through 6 lode mining claims, CA MC 119470 through CA MC 119475, because the notices of location were not filed with BLM within 90 days after the date of location as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b).

The claims were located August 24, 1982, and submitted to BLM November 23, 1982, the 91st day after location. There is no indication on

the copies of the location notices submitted to BLM that the notices were recorded in San Bernardino County, California.

On appeal, appellant states that the notices of location were date stamped by BLM as having been received at 7:30 a.m., November 23, 1982. He suggests that, as the Postal Service does not deliver mail that early in the morning, his notices must have been received by BLM November 22, 1982, the 90th day after location.

Contrary to the opinion of appellant, mail to the offices in the Federal Office Building, 2800 Cottage Way, Sacramento, is delivered in bulk by the Postal Service at about 7 a.m. daily. Distribution to the offices is completed by 7:30 a.m. The date stamp of 7:30 a.m., November 23, 1982, reflects clearly that the location notice was received at that time, and was not held over night before being stamped as received.

Despite appellant's statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and datestamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the documents had been mailed and an error by the Postal Service prevented them from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulations. Magma Power Co., 68 IBLA 201 (1982); Edna L. Patterson, 64 IBLA 316 (1982); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his mailing to the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

[1] Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location; section 314(c) provides that failure to file the instrument required by section 314(b) shall be deemed conclusively to constitute an abandonment of the claim by the owner. The requirements of the statute and the consequences for noncompliance are restated in the regulations at 43 CFR 3833.1-2(b), and 3833.4(a). Since a copy of the notice of location for appellant's claims were not filed with BLM within 90 days after August 24, 1982, BLM properly refused to accept the filing tendered and declared the claims abandoned and void. James R. Norman, 67 IBLA 223 (1982). This Board has no authority to waive noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant should confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge.

